



## PATERNITY LEAVE: A HUMAN RIGHT

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“One father is more than a hundred school masters”

-George Herbert

We overemphasize and talk a lot about a mother's role in a child's life. But then the reality is the father is the pillar of the home and actually plays a very important role in a child's life. So, then it is mandatory that he spends maximum time from the birth of his child to the earlier few months. A good foundation leads to a good upbringing! That is why paternity leave is not only a human right but an urgent requirement.

One of the main differences between a man and a woman is the amount of time they spend at home, specially taking care of their children. This is the reason behind women not being employed, or financially independent in most parts of the world. The only way to correct this difference is by equally dividing responsibilities at home.

According to the studies, when a father is present within the child, he or she grow up as healthier and happier individual apart from the presence of mother with the infant. A UNICEF report suggests that the when a child have healthier relationships with his or her father, a child is more likely to grow up with better mental health, self-esteem, and are more satisfied with their lives, as they

grow up. The father of a child always plays a secondary role in taking care of a new born child because it is always believed that a child needs the mother the most, but actually it needs a father too.<sup>1</sup>

One way to begin is to ensure that from a child's birth the parents are equally responsible for the care of the child. Mothers should not only be offered leave to take care of the child, but fathers should also be offered leave. It should be as normal for a father as for a mother to care of the child. It should be a human right for men to be able to take paternity leave.<sup>2</sup>

The examination of whether paternity leave is a human right starts with exploring the main instrument of women's human rights: The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This thesis will explore whether such a right can be found in CEDAW. The thesis then continues to examine whether a right is provided for under other international instruments and whether the concept 'paternity leave' is supported in the work for women's equality in the world. The examination of all the different relevant documents reveals that the right to paternity leave can be claimed under Article 26 of the International Covenant on Civil and Political Rights. This right can be claimed if a national law or policy discriminates against a man if such a leave is only offered to

<sup>1</sup><https://www.indiatoday.in/education-today/gk-current-affairs/story/three-months-paid-paternity-leave-unicef-1261417-2018-06-15>

<sup>2</sup>[https://www.researchgate.net/publication/41784723\\_Paternity\\_Leave\\_as\\_a\\_Human\\_Right\\_The\\_Right\\_to\\_Paternity\\_Leave\\_Parental\\_Leave\\_for\\_the\\_Father\\_as\\_a\\_Way\\_to\\_Actual\\_Gender\\_Equality\\_in\\_the\\_View\\_of\\_CEDAW\\_and\\_other\\_International\\_Instruments](https://www.researchgate.net/publication/41784723_Paternity_Leave_as_a_Human_Right_The_Right_to_Paternity_Leave_Parental_Leave_for_the_Father_as_a_Way_to_Actual_Gender_Equality_in_the_View_of_CEDAW_and_other_International_Instruments)



women. A right to paternity leave should also be possible for a father to claim under Article 11 of CEDAW. This right may be claimed when a denial of paternity leave leads to discrimination against him that may affect the mother of his child as well as. The examination of all the different documents also reveal that there is good reason for concluding that non-discrimination as to sex is a customary international law.<sup>3</sup>

### How did paternity leave come into existence?

Gary Ackerman, a very different man who was a teacher by profession was the one to initiate this unique concept almost 49 years ago. He was from New York City and had a daughter in late 1969. When Gary's daughter was 10 months old, he had applied for paternity leave (without pay). The principal did not recommend the law suit and so did the superintendent. He was told that the childcare policies of the Board of Education are only for female employees. Gary went AWOL from his job and filed a suit of discrimination with Federal Equal Employment Opportunity and sued the U.S. District Court board.

Gary went AWOL and filed a complain with his wife of discrimination with Federal Equal Employment Opportunity Commission and sued the U.S. District Court Board.

Their argument: granting child-care leaves only to women is an invasion of privacy because it forces mothers to be housekeepers and child rearers and prevents husbands and wives from dividing up family

responsibilities as they see fit.”In 1973, the Equal Employment Opportunity Commission, “found that the mothers-only rule ‘discriminates against male teachers as a class.’ As a result, the board says it will reword its bylaws to ensure equal rights for fathers.” That autumn, the relevant section of the Board of Ed bylaws was amended so that it no longer referred to an affected teacher as “her” or relied on the timing of the teacher’s pregnancy, thus expanding its relevancy to fathers and to adoptive parents. The determination is widely regarded as the ground-breaking first step toward paternity leave’s existence.<sup>4</sup>

Just how ground-breaking was it? Ackerman's motion to have a lawsuit he filed against the Board of Ed (separate from the EEOC case) considered as a class-action suit was denied because, though 40% of the Board of Ed's teachers were men, he was the first male teacher ever—and one of two in total—to apply for childcare leave before that 1973 change. According to a New York Times article about the EEOC's decision, at the time about 2,000 to 3,000 female teachers took a maternity leave in the city each year.<sup>5</sup>

Eventually Gary Ackerman was denied of compensation as he had stopped teaching.

### Paid Paternity Leave by UNICEF

UNICEF has proposed a 16-week paid paternity leave. This was earlier for four weeks. UNICEF is the first UN agency to extend this kind of leave for more than four weeks. The objective behind this was to

<sup>3</sup>*Ibid.*

<sup>4</sup>[time.com/3916437/paternity-leave-gary-ackerman/](http://time.com/3916437/paternity-leave-gary-ackerman/)

<sup>5</sup>*Ibid.*



foster the relationship between fathers and infants.

According to Henrietta Fore, UNICEF Executive Director, positive and meaningful interaction with mothers and fathers from the very beginning helps shape children's brain growth and development for life, making them healthier and happier, and increasing their ability to learn. It's all of our responsibility to enable them to fill this role.<sup>6</sup>

According to a new analysis by UNICEF, India is among the 90 countries in the entire world who have not prescribed any national policy for the new fathers to bond with their babies with paid leave.

In fact, according to the report, 90 million tiny humans, as soon as they are born, doesn't avail the presence of their fathers to spend time with them.

Father's presence affects mental health and self-esteem of a child in a positive manner.

### Provisions under CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women does not emphasize or focus on paternity leave. But its travaux préparatoires and General Recommendations support gender equality and the shared responsibilities at home.

Travaux préparatoires in CEDAW puts some light on the idea of men being involved in childcare. This was suggested by some fathers of some countries who stated that they should be offered parental leave.

<sup>6</sup>*Supra Note 1.*

During the initial discussions there was no agreement among the countries regarding paternity or parental leave.

Preamble includes four major Conventions that give equal rights to women without any discrimination. The Conventions are:

- UN Charter – United Nations Charter
- ICCPR – International Covenant on Civil and Political Rights
- ICESCR - International Covenant on Economic, Social and Cultural Rights
- UDHR – Universal Declaration of Human Rights

Also, the preamble states the social significance of parents being a part of upbringing of a child and that the responsibility should be equally shared. A change is needed in the traditional role plays of the men and women in family and society. Throughout the travaux préparatoires discussions this was the major factor that the stereotypes regarding the roles of men and women needs a transformation.

Suggestions were given by Benin, Indonesia and the All African Women's Conference that preamble should include equality in law and in fact.

Article 2 states the ways to combat discrimination. Some delegates were in a view that equality would not come while focusing exclusively on women, the perception of men's role needs to be changed.

Article 5(a) emphasizes the importance of eliminating sex role stereotyping and prejudices. Discussions were also held under Article 5(b) concerning the common responsibility for men and women in the



upbringing of their children. Several countries stated that it was important to get men more involved in this, and that prejudicial practices involving women and men's roles should be abandoned.<sup>7</sup>

In Article 11, it is provided for equal pay and equal opportunities in employment for men and women. Article 11(2)(b) calls on States Parties to introduce maternity leave. In the preparatory discussions, the talk focused on women and their situation. Some countries representatives emphatically argued for the importance of men to be given the same opportunity to assume responsibility regarding their children. The idea of enabling men to share in the care for their children was suggested; however, it did not at time gain any great response. The provision also emphasize that parents should be given support to be able to combine work with family responsibilities.<sup>8</sup>

Article 16 provides for equality in the family and the delegates of the travaux préparatoires were of very different opinions of what this provision should say. Women's rights in the family was a very sensitive area. This Article is still one of the more controversial in the Convention, which is reflected in the number of reservations to the Article. However an overwhelming majority, 152 out of 185 States Parties has not made a reservation against it.<sup>250</sup> The Committee has stated that there the uneven burden on women concerning the care of the home needs to be corrected. It is also provided that men and women have the same rights and responsibilities as parents

and the interest of children shall be paramount in all cases. In General Recommendation No. 21 the Committee stated that to consider the children's best interests is a principle of almost universal acceptance. The Committee considers this Article and Article 2 to be of utmost importance and a reservation against any of them goes against the object and purpose of the Convention.<sup>9</sup>

There has not been any case concerning parental leave or paternity leave in the case-law of the Committee's decisions on individual complaints under the Optional Protocol. The Committee has furthermore neither decided on a where a complaint has been submitted by a man. The ordinary meaning of the provisions has been considered, and the travaux préparatoires along with the General Comments have been used as an aid to discern the context as well as the object and purpose of the provisions.

There is no provision in the Convention that explicitly state that paternity or parental leave should be provided, however there are Articles providing for States to take measures to discrimination against women, eliminate stereotyped gender roles as well as equal opportunities in employment. Implicit in the context and in the object and purpose of the whole Convention is the actual realization of gender equality and the elimination of discrimination against women. It is several times stated in the travaux préparatoires that gender equality cannot be realized until men and women equally take part in work within the family and in society at large. It is possible that an argument that men should be accorded

<sup>7</sup><https://lup.lub.lu.se/luur/download?func=downloadFile&recordId=1558449&fileId=1564657>

<sup>8</sup>*Ibid.*

<sup>9</sup>*Ibid.*



paternity leave under Articles 5(b) and/or 11(2)(b) in conjunction with Article 2 would be accepted.<sup>10</sup>

### **The International Labour Organization**

There are Conventions by International Labour Organization which mainly gives the equal opportunities for men and women in employment sector without any kind of discrimination. There are a lot of issues which need to be put right in this sector. Some of the issues arise due to inequality, unequal pay and prejudice on basis of gender.

The conventions major aim is to ensure that women are at par with men. In 1981, the Convention on Family Responsibilities was based on two major points. They are:

- Development of child care facilities.
- Importance of changing traditional roles.

This gave the facility to parents of take leave of absence after the maternity leave is over. In 2000, there was another convention on maternity protection. This gave 14 weeks of leave after the child birth. The Recommendation on the above provides a benefit of parental leave after the maternity leave expires.

In 2014, a report by ILO discussed the application of maternal, paternal and other child-giver leaves. In the document, it was also observed that “Compulsory paternity leave helps to ensure that fathers share childcare responsibility with mothers and allows for greater involvement of men in the

critical early stages of an infant’s development.”<sup>11</sup>

There are basically two kinds of spheres: the private and the public. The private sphere is one where a child is raised along with parents and family members. Public sphere is one where the society at large is involved. There should be actual gender equality in both the spheres. There is currently a lot of imbalance in these spheres.

With an ability to work and earn money one not only becomes independent, it also builds one’s self-esteem. This is equally necessary for men and women.

### **Europe Union and the Council of Europe**

The European Union or EU is a political and economic union. It consists of 28-member states, primarily located in Europe. There has been a commendable improvement in Europe regarding gender equality. Many of the countries offer maternity, paternity and parental leave. The European Union has adopted legislation to reduce discrimination on gender basis. It has also adopted various methods within its labour laws. The only objective was gender equality.

Till 90s the European Court of Justice was criticized for passing judgments which were supporting the generalized idea of gender. In 1996, a directive on parental leave obligations made it compulsory to allow a minimum of three months leave. This leave would be non-transferable parental leave for men and women workers.

<sup>10</sup>*Ibid.*

<sup>11</sup><https://mediaindia.eu/social-vibes/paternity-leave-provided-by-some-firms-in-india/>



This was adopted by the Council of Europe. The Recommendations aimed at the following:

“The fathers of newly born children should also be allowed a short period of leave to be with their families. In addition, both the father and the mother should have the right to take parental leave during a period to be determined by the national authorities without losing either their employment or any related rights provided for in social protection or employment regulations. The possibility should exist for such parental leave to be taken part-time and to be shared between parents.”<sup>12</sup>

In 1994, the Committee of Ministers were in a view that men should share equal responsibility at home. The main objective of the Recommendation was on the role of fathers. It stated:

“The Family must be a place where equality, including legal equality, between women and men is especially promoted by sharing responsibility for running the home and looking after the children, and, more specifically, by ensuring that mother and father take turns and compliment each other in carrying out their respective roles.”<sup>13</sup>

In 2001, the European Ministers had a debate about the role of men and boys. It was concluded that measures should be made to encourage men so that they

understand their role in supporting the family life.

Recently, there was a new protocol to ECHR. This gave an independent right which does not have to be bound with the Convention. Yet, it would have the same effect as Article 26 of ICCPR.

Article 26 states

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>14</sup>

The awareness of such measures is on the move. Encouraging men as well as women in sharing their duties at home and child care is much needed. True gender equality is not an easy task. It will definitely take a long time.

### **Policies in India**

In 2017, After the Maternity Benefit (Amendment) Act, 2017, a new bill is known as Paternity Benefit Bill had been proposed by Rajeev Satav, MP from Maharashtra, in the Lok Sabha in September for the benefits of fathers of new-borns. The bill states that all workers, including those in the unorganised and private sector, get paternity leave of fifteen days extendable up to three months. It emphasized on equal parental benefits for both the mother and the

<sup>12</sup> Recommendation of the Committee of Ministers to Member States on Reconciling Work and family life, Rec(96)5E, 19 June 1996.

<sup>13</sup> Recommendation of the Committee of Ministers on Coherent and Integrated Family Policies, Rec(94)14E, 22 November 1994, Appendix Principle 4

<sup>14</sup><https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>



father. According to his words, “Child care is the joint responsibility of both parents. They must devote time to the new born to ensure its proper well-being”.<sup>15</sup>

The main aim of this bill is to provide benefit to natural parent, adoptive parent, or a person acting in loco parentis to the relevant child. If it is enacted by the Parliament, it will benefit the population of 32 crore men in the labour force (NSSO, 2012 data), including those in the unorganised sector. Introduction of paternity leave will ensure that the mother gets some support from the father during and after childbirth, who is not forced to return to the workforce in order to generate income. At present, the Central employees under the All India and Central Civil Services Rules can avail a paid fifteen-day paternity leave which puts India in the top fourteen countries to provide the highest maternity leave and by providing fifteen days paid paternity leave to all the sectors, India will be in top thirteen countries to provide the highest paternity leave and other associated benefits.<sup>16</sup>

Although there is no legal law for paternity leave for private sector employees, there is a small clause for central government employees. The rule states that a central civil service officer (including an apprentice) is entitled to a fixed period of 15 days paid leave. Here are the rules for paternity leave for government sector employees:<sup>17</sup>

- The fixed 15 days paid leave is applicable only on the birth of first and second child.

- This leave can be availed anytime within six months of the childbirth.
- If the leave is not taken within the prescribed time, it shall be considered lapsed.
- The pay calculation for leave days will be calculated on the basis of the last salary drawn before proceeding on leave.
- The paternity leave is free to get combined with any other kind of leave.
- If a civil servant wants to adopt a child, he will be entitled to the paternity leave. However, this clause is not available for private sector male employees. They do not get paid paternity leave at the time of childbirth or adoption of a child.

Despite the Indian law not including ‘paternity leave’ as a mandate in private workplaces, there are a few provisions for government employees and a gradual shift is being done voluntarily in the private sector. Multinational Corporations such as Microsoft and IKEA have been leading the way in India in providing men with ‘paternity’ leaves, recognising the importance and necessity of a father’s role after childbirth as well as in child rearing.<sup>18</sup>

In the year 2009, in *Chander Mohan Jain v. N.K Bagrodia Public School*, Chandermohan Jain, a private school teacher moved to the High Court of Delhi challenging the rejection of his paternity leave application and deduction of his salary by N K Bagrodia Public School for taking leave to take care of his wife and the newly born child. Despite there being no legislation, New Delhi High

<sup>15</sup><https://blog.ipleaders.in/paternity-leave-india/>

<sup>16</sup>*Ibid.*

<sup>17</sup><https://www.aajkinaari.com/eligibility-rules-and-benefits-details-of-paternity-leave-in-india/>

<sup>18</sup>*Supra Note 11.*



Court in this case held that all male employees of unaided recognised private schools were entitled to paternity leave. The court then directed the school to refund the deducted amount to Chandermohan Jain. Therefore, providing relief to private sector teachers.<sup>19</sup>

### **Paternity leave around the world**

India comes among 92 countries in the world without any national provisions for paid paternity leave. Nonetheless having the most infant mortality rate, countries like India, Nigeria, China don't have any provisions of paternity leave to entitle any benefit to fathers. Comparatively, countries with higher infant population like Brazil and most of the European countries have the best parental leave policies.<sup>20</sup>

**Norway:** The statutory parental leave is either 49 weeks at 100% salary or 59 weeks at 80% salary to be divided between both parents but with some constraints. The father is entitled to take 2 weeks paid leave when the child is born and must take additional 14 weeks of paid leave before the child turns 3 years of age. The remaining weeks to use are up to the parents how they want to use it.

**Iceland:** Both the parents have an independent right to parental leave of three months and also have a joint right to three additional months, which may be either taken by one of the parents or equally divided between them.

**Sweden:** Parents are provided the policy of getting 480 days (16 months) of paid parental leave at 80% of their salary. They are also

entitled to 180 bonus days in case of twins. Swedish fathers must take at least three of those 16 months. The days do not expire till the time the child reaches age of 8.

**Spain:** Fathers are entitled to 30 days paid leave to do justice with fatherhood and bond with the new born child at 100% of covered pay.

There is a landmark case where the court was in favour the new father. Call worker Madasar Ali wanted to care for his new daughter Yasmin after his wife was diagnosed with post-natal depression but was told by employer Capita his pay would fall to the statutory minimum after two weeks. Women at the company are entitled to 14 weeks full pay. Domino's driver 'suspended' over filthy car used to transport food It is believed to be the first time a man has won a tribunal of this kind in England since 2015 Government legislation allowed parents to share pay and leave.<sup>21</sup>

The tribunal heard that an 'unnecessarily long and drawn out grievance process' ended with Mr Ali being told he was not entitled to the same rate as a woman. The decision was contrary to the Equality Act 2010 which states an employer must not discriminate against an employee by not affording access to 'promotion, transfer, training or for receiving any other benefit, facility, or service.' The tribunal also found the decision went against the shared parental leave regulations introduced in April 2015 which allow parents to share up to 50 weeks

<sup>19</sup>Supra Note 15.

<sup>20</sup>Supra Note 15.

<sup>21</sup><https://metro.co.uk/2017/06/11/man-threatened-with-pay-cut-for-taking-paternity-leave-wins-sex-discrimination-case-6702106/>



of leave and 37 weeks of pay. The firm, which won an outsourcing deal to run a Telefonica call centre in Leeds in 2013, unsuccessfully cited European work directives to defend its decision.<sup>22</sup>

Employment Judge Rogerson said: ‘It was accepted that he was denied that benefit and was deterred from taking the leave and was less favourably treated as a man. ‘Either parent can perform the role of caring for their baby in its first year depending on the circumstances and choices made by the parents. Teenager shot dead in the street outside north London cinema ‘Inevitably more mothers will take primary responsibility from birth and immediately afterwards but that does not necessarily follow. ‘There may be circumstances where different choices are made to suit the parents and their particular circumstances, like the choice the claimant wanted to make because of his wife’s postnatal depression.’ The tribunal also found in favour of Mr Ali on victimisation claims into the handling of his request. This included Mr Ali having his role changed without adequate justification, being coerced into signing gagging documents to ensure he would not discuss the tribunal and threatened with disciplinary action if he took leave to look after his child. Mugshots released as Britain First leaders are both jailed Mr Ali, who still works for the firm and lives in Leeds, said: ‘I am over the moon with the outcome. ‘The judgement proved that I did definitely have the right to take it as far as I did. I am just so happy to have got it all sorted.’ A remedy hearing to decide on compensation is set to take place.<sup>23</sup>

<sup>22</sup>*Ibid.*

<sup>23</sup>*Ibid.*

### **Paternity leave benefits**

There are few relevant points from a Swedish campaign which supports the positive benefits from active fatherhood:<sup>24</sup>

- You need to know your own child. The deepest contact between parent and child is developed during the child’s first months of life, when it is little and helpless. You cannot have that time back again.
- You will train your fathering instinct. Through taking care of the baby alone, you become attentive to its needs, you get to know its signals and develop a close relationship with your child. It increases your self-confidence as a parent.
- You will gain your child’s confidence.... If you show you are able to take care of the child, the child will go to you later with its worries and its joys.
- You get to watch your child develop and not just hear about it second hand. Everyday something new and fantastic happens.
- You will become closer to your child’s mother. You can share experiences and responsibilities with each other.
- You will develop your social competence. Being with a child places completely different demands on you than being with an adult.
- You will develop new skills because you are obliged to solve problems which you perhaps did not know existed.
- You will have fun. To take care of small children is very demanding but also gives a

<sup>24</sup>Försäkringskassan 1997:3, translation by L. Haas and P. Hwang, ‘Parental Leave in Sweden’, in P. Moss and F. Deven (eds.), *Parental Leave: Progress or Pitfall? Research and Policy Issues in Europe* (IDI/CBGS Publications, Brussels, 1999) p. 51



great deal back to you. You will come to feel appreciated loved as never before.

- You will never regret that you took this unique opportunity to gain a deep, close and meaningful relationship with your child from the beginning.

(From Haas and Hwang 1999 translation of The Swedish Social Insurance Agency (Försäkringskassan) 1997)

Paternal time spent caring for children alone is qualitatively different from time spent together mediated by the presence of the mother and may be particularly relevant to father-child relations. Many fathers spend minimal time alone with their children. Indeed, it is still commonly referred to as 'babysitting'.<sup>25</sup>

### Conclusion

Men and women should be treated equally, this is a fundamental right. Family life and work life are interrelated and have an effect on each other. So, it becomes very important to have a balance between the two. This can be done when the work is divided equally at home.

The right to paternity leave is making a progress in many parts of the world. However, they have not been specifically stated. Most of the statements and documents only state that there should be gender equality and a shared responsibility at home.

There are many countries who have paternity leaves and support the time which fathers want to spend in the initial years of

their children. Those countries who have ratified the Optional Protocols of CEDAW or ICCPR, can take the advantage of this right. The countries who have failed to sign the above Conventions need to make national laws regarding the total gender equality in keeping with paternity leave.

The main focus is childcare but it will also be beneficial for the mothers and shared responsibility at home. This would lead to division of work and improve the bond between father and child. It would put an end to sex stereotyping of men and women's traditionally accepted roles. When men and women share work equally at home it would help them enhance career as well as gain independence in their individual lives.

A strong nation is built on the foundation of a strong society. And a society is built with strong and stable families. For this the father and mother have to play an equal role in the initial months. This not only gives rise to a good individual but also enhances the women's career and the man's role as a father. As Anne Hathaway (Global Goodwill Ambassador, UN Women) rightly said "to liberate women, we need to liberate men". This liberation means liberation from the usual thought that mothers are home-makers and fathers are the bread winner.

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<sup>25</sup><https://www.tandfonline.com/doi/abs/10.1080/03004430903172335?journalCode=gecd20>